IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2145 OF 2004

Babu Sahu Ghosh ... Petitioner

versus

State of Maharashtra & anr. ... Respondents

...

Mr. M.P. Mishra, for the Petitioner.

Mr. V.B. Konde Deshmukh, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

28th October 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondents. As short question is involved, petition taken up for final disposal forthwith by consent.

. This petition takes exception to the order passed by the Deputy Commissioner of Police, Zone 10, Mumbai, under section 56(1)(a)

and (b) of the Bombay Police Act against the Petitioner. The limited grievance that needs to be addressed in the present petition, without going into the other aspects of the contentions raised before this Court, is that the Petitioner has been denied fair opportunity to contest the proceedings before the first authority. The argument proceeds on the assertion that the Petitioner intended to examine defence witness before the first authority and for that purpose, it kept the witnesses ready for examination before the first authority on the appointed date, but the authority did not provide that opportunity to the Petitioner; instead, proceeded to decide the matter by keeping the Petitioner waiting outside his office. This grievance was specifically made before the appellate authority as can be seen from para 6 of the appeal memo. It is contended before this Court that even the Advocate appearing for the Petitioner had pressed this ground before the appellate authority, but the same is not even adverted to, much less considered by the appellate authority. In the writ petition as filed before this Court, the aforesaid grievance has been reiterated in para 9 of the petition.

No reply has been filed controverting this position. The learned A.P.P., however, justifies the order passed by the authorities below on the ground that the record indicates that sufficient opportunity was given to the Petitioner. However, this submission, to my mind, is begging the question. The specific grievance made on behalf of the Petitioner is that the Petitioner has been denied opportunity of examining defence witnesses. This contention was specifically raised before the appellate authority, but has not been considered. The same has been retierated on affidavit before this Court, which assertion has remained uncontroverted. In other words, the proceedings, which have been concluded against the Petitioner obviously suffer from the vice of principles of natural justice. It would be a different matter if the authority was to take the view that it is not permissible in law to the Petitioner to produce defence witnesses in proceedings such as the one under section 56 of the Act, but, by no stretch of imagination, the argument of the Petitioner which is canvassed can be lightly brushed aside, because that impinges upon the fairness of the proceedings and, therefore, violative of principles of natural

justice. Accordingly, this petition succeeds. The orders passed by both the authorities below are set aside and, instead, the matter is restored to the file of the first authority for reconsideration to be decided on its own merits and in accordance with law, uninfluenced by any of the observations in the orders which are already set aside by this decision. The first authority shall provide fair opportunity to the Petitioner for effectively showing cause by examining defence witness. The proceedings be finally disposed of by the first authority as expeditiously as possible preferably within three months from the date of receipt of this writ petition. Petition succeeds on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)